IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mammi Khan v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.3299/2000
under Articles 226 and 227 of the Constitution of India.

Date of Order : 12th July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Varun Goyal, for the petitioner.
Mr. B.L.Tiwari, Addl.Govt.Advocate.

BY THE COURT :

The Assistant Commissioner Colonisation, Indira Gandhi Canal Project, Kolayat by judgment dated 29.9.1986 decreed the suit preferred by the petitioner in terms to make necessary corrections in land record pertaining to the land measuring 52 bighas by entering name of petitioner Mammi Khan son of Antar Khan in revenue records. Necessary directions in this regard were given to the Tehsildar Colonisation.

In compliance of the judgment dated 29.9.1986 requisite correction was made and name of the petitioner was entered in land revenue record with regard to land in question measuring 52 bighas. No appeal was preferred by State or by any other party giving challenge to the judgment dated 29.9.1986.

The Deputy Commissioner Colonisation, Bikaner by his order dated 11.9.1995 by exercising powers under Section 232 of the Rajasthan Tenancy Act, 1955 (hereinafter referred as “the Act of 1955”) made a reference to the Board of Revenue for cancellation of the entries made in favour of the petitioner in pursuance of the judgment and decree dated 29.9.1986. The Board of Revenue by judgment dated 31.1.2000 accepted the reference and set aside the judgment and decree dated 29.9.1986.

The instant writ petition is preferred giving challenge to the judgment dated 31.1.2000.

Besides certain other contentions it is contended by the counsel for the petitioner that the judgment dated 31.1.2000 deserves to be quashed and set aside as the reference was made by Deputy Commissioner Colonisation at quite a belated stage. The petitioner to substantiate the contention relied upon Division Bench judgment of this Court in the case of Anandilal v. State of Rajasthan, reported in 1995

(1) RLR 555 and also upon the another Division Bench judgment in the case of State of Rajasthan v. Teja & Ors., reported in 2005(4) RDD 921.

The Division Bench of this Court in the case of Anandilal (supra) held that simply because the provisions of a particular statute does not provide for limitation, the authority on whom the power is conferred is not free to exercise the same at any time. The authority on whom the power is conferred should exercise the same in a reasonable manner and within a reasonable time. The exercise of power after inordinate delay is unreasonable and arbitrary exercise of powers, it would be void under Article 14 of the Constitution of India. In the case of State v. Teja (supra) the Division Bench reiterated the law laid down in the case of Anandilal (supra).

It is pertinent to note that both the cases referred above pertains to the reference made under Section 82 of the Land Revenue Act, 1956 and Section 232 of the Act of 1955. In the present case the reference was made under Section 232 of the Act of 1955. It is true that Section 232 of the Act of 1955 no where provides any limitation of time for making a reference but it is well settled that the authority conferred with the power is required to exercise power without any inordinate delay and within reasonable time. A question decided at one point cannot be

allowed to remain open for further interference for indefinite period, as such the powers under Section 232 of the Act of 1955 are necessarily required to be exercised within a reasonable period and without any delay.

In the present case the suit was decreed in the year 1986, no appeal giving challenge to the judgment and decree dated 29.9.1986 was preferred by the State or its officers and the reference was made in the year 1995 i.e. after a period of about nine years from the date of the judgment and decree passed by the Assistant Commissioner Colonisation. There is no just and valid reasons available with the respondents for making reference at such a belated stage. The petitioner is in possession of the land in dispute from petty long time and, therefore, the reference made and decided under Section 232 of the Act of 1955 against the petitioner is unjust and arbitrary.

In view of it the judgment impugned dated 31.1.2000 passed by the Board of Revenue is hereby quashed and the writ petition is allowed accordingly with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.